

Attorney Docket No.: **TI-0028**
Inventors: **Gerard et al.**
Serial No.: **10/688,665**
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REMARKS

Claims 1-12 are pending in this application. No new matter has been added. Applicant is respectfully requesting reconsideration of the restriction requirement in view of the following remarks.

Claims 1-12 have been subjected to a Restriction Requirement under 35 U.S.C. §121 as follows:

Group I, claims 1-9, drawn to purified isolated CEL I and CEL II endonucleases, a method of preparing and a method of separating; and

Group II, claims 11-12, drawn to a method for detecting the presence of mismatches in a double-stranded DNA using CEL II and a kit.

The Examiner acknowledges that Inventions I and II are related as product and process of use; however, they are distinct because the product as claimed can be used in a materially different process such as for its endonuclease activity not related to detection of mismatches. Applicants are required to elect one of the Groups to be examined. Applicants respectfully traverse this restriction requirement.

At the outset, Applicants respectfully point out that the claims have been improperly restricted, in that claim 10 has not be placed into either of Group I or Group II. Because claim 10 is dependent upon claim 9 of Group I and is directed to a composition, Applicants have assumed that claim 10 is also to be included in Group I.

MPEP §803 is quite clear; for a proper restriction requirement, it must be shown (1) that the inventions are independent or distinct AND (2) that there would be a serious

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burden on the Examiner if the restriction is not required. MPEP 802.01 defines "distinct" to mean that the "two or more subjects as disclosed are related, for example, as combination and part (subcombination) thereof, process and apparatus for its practice, process and product made there, etc., but are capable of separate manufacture, use, or sale, as claimed, AND ARE PATENTABLE (novel and unobvious) OVER EACH OTHER."

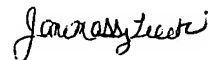
As the compositions of Group I and the kits of Group II contain the same protein element, i.e., an isolated CEL II endonuclease enzyme, a search of the compositions of Group I will be co-extensive with the kits and methods of Group II. Moreover, because endonuclease activity of CEL II is at mismatches, an analysis of double-stranded DNA contacted with CEL II would inherently detect mismatches in the DNA. Thus, no serious burden would be incurred by the Examiner in searching and examining together claims of Groups I and II. Accordingly, reconsideration and withdrawal of the restriction requirement is respectfully requested.

However, in an earnest effort to be completely responsive, Applicants hereby elect to prosecute Group I, claims 1-10, drawn to purified isolated CEL I and CEL II endonucleases, a method of

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preparing and a method of separating, classified in class 435,
subclass 199, with traverse.

Respectfully submitted,



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